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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

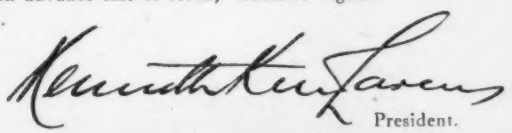
The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

Validity of a Wisconsin Business Trust

In Baker vs. Stern, 216 N. W. 147, the Supreme Court of Wisconsin "is called on for the first time to deal with some of the legal aspects of a business trust, a business device which had its development principally in Massachusetts and is consequently frequently referred to as a Massachusetts Trust." The "Agreement and Declaration of Trust" is set out in full. The court finds that the plan as disclosed is not contrary to public policy, notes that business trusts are recognized by legislative act, cites Sec. 226.14 of the Wisconsin Statutes (Chap. 431, Laws of 1923), but says that each plan must be tested by applicable rules of law and that what it now says "is not to be construed as a wholesale approval of any form of so-called business trusts which may be hereafter considered." There is full discussion with a helpful assembling of citations to authorities.

The Promoter of a Corporation

In Allenhurst Park Estates, Inc. vs. Smith, et al., reported in 138 Atlantic, page 709, Vice-Chancellor Berry of the New Jersey Court of Chancery discusses at length, many cases being cited, the general question of the relationship of a promoter to the corporation which he organizes, and related aspects involving, inter alia: the secret profits rule; innocent subscribers to stock; subsequent purchasers of stock; self-protective safeguards the promoter should employ; subscription to all the stock by the promoter; bonus stock; profit by promoter on advance sale of stock; creditors' rights.



President.

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Edited by John H. Sears of the New York Bar

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special ring binder will be furnished at cost ($2) and thereafter, before mailing, each copy will be punched to fit the binder.

Contents for February

Protection of Corporate and Trade Names

With the great increase in number of corporations it is becoming more and more difficult to select a corporate title not already in use. Two distinct legal factors must be kept in mind, the purely statutory regulations pertaining to conflict in the state of incorporation and the state or states in which registration as a foreign corporation is expected to be secured, and the purely common law principles which protect the first adopter of a trade name, corporate, individual, or partnership.

The first factor mentioned is met by inquiry to the secretaries of the states involved. In this the services of The Corporation Trust Company are particularly helpful to counsel, not only in securing prompt results, but often in being able to point out what the particular difficulties are and directing choice of name along lines where no conflict exists. The latter is frequently difficult to handle by the usual methods of correspondence directly available to attorneys, or to others not having direct and constant contact with the state officials and departments.

The second factor mentioned is met by knowledge of the trade involved. Usually the names with which conflict may result are well known. A recent and interesting example of protection on common law principles of a well-known corporate title is that afforded to America's oldest business corporation, "The Governor and Company of Adventurers of England trading into Hudson's Bay," commonly known as "Hudson's Bay Company." This company has been in existence since 1670 under a charter granted by King Charles II. Not until 1925 did it organize its subsidiary in New York, with the name "The Hudson's Bay Co." The United States Circuit Court of Appeals for the Fifth Circuit has recently affirmed a decision of a District Court enjoining use by an individual and associates, not connected with this ancient corporation, of the title "Hudson Bay Fur Company" or "Hudson Bay Fur Company of Texas, Independent," (Abraham Buckspan, Appellant, vs. Hudson's Bay Company, No. 5139, Fifth Circuit Court of Appeals).

Domestic Corporations

Arizona.

County in which corporation may be sued on a breached contract to pay for special services rendered. Suit was for the reasonable value of services rendered by the plaintiff in examining and reporting on certain mining properties in Pinal County belonging to the defendant company whose principal office is in Maricopa County, for which services defendant refused to pay as agreed. Plaintiff resided and maintained an office as mining engineer in Pima County in the Superior Court of which the original action was brought. The contract of employment, entered into

by correspondence, was made in Pima County as the offer of employment was received through the mail there and from there accepted by letter. By paragraph 394, subdivision (18), of the Arizona Civil Code, 1913, suit against a corporation "may be brought in any county in which the cause of action, or a part thereof, arose, or in the county in which the defendant has an agent or representative or owns any property or conducts any business." Defendant had no agent or representative and owned no property and conducted no business in Pima County. Whether or not the Pima County court had jurisdiction is dependent on whether or not the cause of action or a part thereof arose in that county. Defendant contended that the cause of action was the breach of contract by refusal to pay and that such breach was at the place of its performance—i.e. at its principal office in Maricopa County. The Supreme Court of Arizona, on appeal, is satisfied that the venue was properly placed in Pima County, saying: "It is true that no suit could be maintained against defendant for the reasonable value of plaintiff's services until defendant refused to pay for such services, but is the breach the whole cause of action or just a part of it? The foundation of the cause of action is the agreement of plaintiff to render services and of the defendant to pay therefor. Without such agreement, expressed or implied, there could be no breach. Dissected, it would seem that the cause of action here consisted of the contract and its breach. If that be so, it arose in part in Pima County, where the contract was made, and in part in Maricopa County, where defendant refused to pay. It did not wholly arise in either county." Arizona Superior Mining Co., vs. J. C. Anderson, not yet reported. James E. Nelson and E. S. Clark, of Phoenix, for appellant. Kingan, Campbell, Conner & Darnell, of Tucson, for Appellee.

Canada.

Reorganization of companies in Canada. The foregoing is the title of an article in the December, 1927, issue of the Columbia Law Review (Kent Hall, Columbia University, New York City) by W. Kasper Fraser a member of Worrell, Gwynne, Fraser, and Beatty, Barristers and Solicitors, Toronto, Ontario, Canada. A general introductory statement, helpful to those who may be called on to decide whether to incorporate under the Dominion Companies Act or under the Companies Act of one of the provinces, is followed by an enlightening discussion of various kinds of reorganizations commonly effected in Canada, law and practice being covered, and numerous specific instances of reorganizations being briefly described. Subsidiary title headings are "Bondholders' Reorganizations," "Modification of Bondholders' Rights Without Sale Proceedings of Bondholders," "Reorganizations Effected at the Instance of Creditors by Means of Liquidation," "Shareholders' Reorganizations and Capital Readjustments," and "Practical Differences Between American, British, and Canadian Procedure in Bondholders' Reorganizations." The article will be of interest to members of the United States bar generally and particularly to those whose professional activities are devoted largely to the welfare of corporations, their shareholders, bondholders, and creditors.

Florida.

Principal and agent. Suit by physicians against a corporation for (among other items) the fair value of services rendered at the request of the secretary-cashier and bookkeeper of the corporation in performing autopsy on the body of the corporation's deceased president. The Supreme Court of Florida reverses (to the extent of this particular item) the judgment of the court below for the plaintiff physicians. The court after reciting the American doctrine on the subject as expressed by Judge Story (Bank of Columbia vs. Patterson's Adm'rs., 7 Cranch 306, 3 L. Ed. 351), says that from this "we can deduce the two tests by which it may be determined whether an act or contract is valid and binding upon a corporation: (1) Is the act or contract within the legitimate purposes of the chartered powers? (2) Is the act done or contract entered into by an agent of the company thereunto authorized, or has such act or contract been ratified by the corporation?" No ratification was disclosed nor was there anything to show that either of the employees was properly authorized to employ the physicians. The court assumes, but expressly refrains from so determining, that the employment was within the charter powers, and then says: "It does not appear that the duties of a secretary and cashier or of a head bookkeeper of a manufacturing corporation such as is the defendant are such that the law implies therefrom authority to employ physicians and surgeons to perform autopsies upon the dead body of an officer of the corporation and therefore a request from them to perform such service is not in law the request of the corporation." E. O. Painter Fertilizer Co. vs. Boyd et al., 114 So. 444. Williams & Bly and J. Turner Butler, all of Jacksonville, for plaintiff in error. George M. Powell, of Jacksonville, for defendants in error.

Iowa.

Rights of minority stockholders on expiration of corporation's charter.—"Winding up" by officers or by court through receiver. The Supreme Court of Iowa affirms an interlocutory order denying minority stockholders' application for receivership pendente lite and temporary injunction. The court says: "Minority stockholders cannot be compelled to assume the hazards of continuing the business after expiration of the fixed period of the enterprise. It is the right of every stockholder on the expiration of the charter to have the property converted into money with reasonable expedition and have the net produce divided. Mason vs. Pewabic Mining Co., 133 U. S. 50. But here the parties are agreed that the 50 [lumber and coal] yards which make up the bulk of the corporate property should be sold as going concerns, and to that end that the business should be temporarily continued. The plaintiff's contention is not that the business ought not to be continued, but that it must be conducted by the court acting through a receiver." Plaintiffs complained of lack of expedition, merely. Continuing, the court says: "On the record before us it would be folly for the court to temporarily conduct and ultimately wind up the business without employing the present managerial and operating forces. The appointment of a receiver

therefore would necessarily result principally in the friction and expense of superadded legal machinery." "The statutes make no provision for the winding up of the corporation by the court or by trustee merely on account of expiration of charter. Normally, the business is to be wound up by the corporate organization, and not by the court." "A temporary receiver is appointed only to preserve the property and to protect the rights of all parties therein. A necessity therefore must be shown. 34 Cyc. 18, 46, 80. The court should proceed with great caution and exercise sound legal discretion. Id., 9, 21. The company's assets are ample to pay all debts and liabilities." M. H. McCarthy Co., et al. vs. Central Lumber & Coal Co. et al., 215 N. W. 250. Kenline, Roedell, Hoffmann & Tierney, of Dubuque, for appellants. Brown, Lacy & Clewell and Frantzen, Bonson & Gilloon, all of Dubuque, for appellees.

Maryland.

Enforcement of contract for sale by corporation of its authorized but unissued capital stock. For the purposes of this digest it may be said that the action is for specific performance of a contract requiring the issuance of shares of stock. By the terms of the contract an individual agreed to serve as general manager of a corporation for two years at an annual salary of $10,000; he was to receive $75 per week in cash the remainder of the amount due to be credited to him and to be applied by him in the purchase of the company's stock; at the end of the two year service he was to be the owner of the company's stock in the amount of $12,200, par value. The individual fulfilled his contract obligations. The contention was made that a court of equity will not grant specific performance of a contract to deliver property not in existence at the time the contract was made. The Court of Appeals of Maryland after saying that though this principle is sound when invoked in a proper case it has no application to the one now under consideration, and that if it were to be applied "few corporations could successfully market their stock," states the rule as follows: "There can be no doubt that authorized but unissued shares of stock of a corporation duly organized are in existence, in legal contemplation, at least in so far as they may be the subject of a contract of purchase, and a contract for their purchase may be specifically enforced by requiring their issuance and delivery." Reed & Fibre Products Corporation vs. Rosenthal. Woelfel vs. Same. Rosenthal vs. Ward, 138 A. 665. J. Purdon Wright and G. W. S. Musgrave, both of Baltimore, for Reed & Fibre Products Corporation and Ward. Vernon Cook of Baltimore (Edward L. Ward, of Baltimore, on the brief), for Woelfel. Sylvan Hayes Lauchheimer and Malcolm H. Lauchheimer, both of Baltimore, for Rosenthal.

Minnesota.

On the transfer of stock. This case is reported here merely because of the general statements made in the matter quoted from the opinion of Chief Justice Wilson, Supreme Court of Minnesota. The merits are of no general interest. "As between the parties, a transfer of corporate stock may be made the same as any personal property without any

book entries. * * * Indeed, the issuance of the certificate through its regular officers to a person therein named is an affirmation by the corporation as to his ownership and is a continuing affirmation that the stock is valid. Joslyn vs. St. Paul Distilling Co. 44 Minn. 183, 186, 46 N. W. 337; Weniger vs. Success Mining Co. (C. C. A.) 227 F. 548; Windram vs. French, 151 Mass. 547, 24 N. E. 914, 8 L. R. A. 750; Fifth Av. Bank of N. Y. vs. 42d. St. etc., Ferry R. Co., 137 N. Y. 231, 33 N. E. 378, 19 L. R. A. 331, 33 Am. St. Rep. 712; First Av. Land Co. vs. Parker, 111 Wisc. 1, 86 N. W. 604, 87 Am. St. Rep. 841. The transfer of the stock on the books of the corporation is for the protection and benefit of the corporation so that it may know with whom to deal as stockholders and who have a right to vote as such; and as against the corporation, the transfer of stock is ineffectual until made on its books. Morrill vs. Little Falls Mfg. Co., 53 Minn. 371, 55 N. W. 547, 21 L. R. A. 174." Mortgage Land Inv. Co. et al., vs. McMains et al., 215 N. W. 192. S. R. Child, H. E. Fryberger, and Donald E. Bridgman, all of Minneapolis, for appellants. Seth Lundquist, Ludwig O. Solem, and Selover, Schultz & Mansfield, all of Minneapolis, for respondents.

Montana.

Suit by stockholders "for the use and benefit" of the corporation will not lie until they have first exhausted their remedies within the corporation itself. It is not essential to recite details. Suit is against the president of a corporation by certain stockholders thereof "for the use and benefit" of the corporation. The Supreme Court of Montana reverses the decision of the court below for the plaintiffs, and directs dismissal. The court says that "In this jurisdiction it is settled law that stockholders may not sue on behalf of the corporation 'until they have applied to the officers and directors for relief and have been answered by a refusal, or the course of conduct being pursued by the latter is such as would render an application for relief fruitless.' Deschamps vs. Loiselle, 50 Mont. 565, 148 P. 335." It was not shown that the president was the only director. There must have been others. The president was subject to the control of the board. Majority stockholders may control the election of directors; by a vote of two-thirds of the stock an objectionable director may be removed (§5940 Mont. R. C.). "The court will not do for stockholders that which they may do for themselves. A minority stockholder must make an earnest effort with the managing body of the corporation to induce remedial action on their part, and this must appear to the court." Hawes vs. Oakland, 104 U. S. 450, is cited. The court concludes, from the pleadings, that the plaintiffs had not exhausted their remedy within the corporation itself. Cobb et al., vs. Lee, 260 Pac. 722. Ralph J. Anderson, of Lewistown, and Campbell & Toole, of Great Falls, for appellant. E. F. Bunker, of Bozeman, for respondents.

New Jersey.

Corporation restrained from carrying out reorganization plan on objection of meager minority of preferred stockholders. In the instant

case, contra to the situation in the Central Leather Company case reported in the December 1927 Journal at page 59, the bill for injunction was promptly filed (immediately on receipt of notice of meeting called to consider vote on the proposed plan of reorganization) before any change had taken place in the circumstances of the company or of others, and there is no question of the standing of the complainants. The Court of Chancery of New Jersey grants the injunction on the ground that the complainant preferred stockholders, between whom and the corporation there exists a contract (by virtue of the certificate of incorporation and the provisions of the General Corporation Act) by which the former are clothed with certain property rights having a fixed, determinate value, "neither seek, nor wish, to surrender their present rights for the one offered [by the plan of reorganization] in their stead, and it is beyond the power of the corporation, this court, or the legislature to compel it." There is an accumulation in arrears of approximately $70 per share on the preferred stock. By the proposed plan of reorganization (there is no suggestion of fraud and best of good faith is conceded) for which about 99% of the preferred stock represented at the meeting called to consider it voted favorably, for each five shares of preferred stock turned in there was to issue one share of preferred and 5 shares of common, both without par value. The court, after citing the 18th section of the General Corporation Act (Chap. 185, P. L. 1896) relating to the dividend priority rights attaching to cumulative preferred stock, says: "At the present time the holders of the existing preferred stock would be entitled to all the existing surplus if the directors should decide to declare a dividend. If that stock is retired in accordance with the proposed plan then it is readily seen that the requirements of the relatively few shares of no-par-value preferred stock might be satisfied out of a portion of the surplus, and the balance thereof devoted to a payment on the no-par-value common stock which would represent and stand in the place of the present common stock. [The common stock was to be exchanged on the basis of one share of the new common stock without par value for five shares of the old common stock.] This would be an indirect means of accomplishing a result that is now beyond the power of the corporation. Not only would the change result in an injury to the future, as well as the past, dividend rights of the preferred stockholders but it would also interfere with and materially diminish or abolish vested rights." Lonsdale Securities Corporation, et al., Complainants vs. International Mercantile Marine Co., Defendants, and Walter F. Volk, et al., Complainants, vs. Same, 139 Atl. 50. Hobart & Minard, Solicitors (Duane E. Minard, of counsel), for complainants Lonsdale, etc. Furst & Furst (Hon. Merritt Lane, of counsel), for complainants Volk and others. Lindabury, Depue & Faulks (Frederic J. Faulks, of counsel), for the defendant.—All counsel, of Newark.

New York.

Acceptance of dividend checks and retention of proceeds thereof defeats claim for rescission of stock purchase on account of fraud. Action is to recover, on account of fraud, money paid for the purchase of stock

in the defendant corporation. The defendant denies false representation and as an affirmative defense alleges "that following the commencement of the suit, and with full knowledge of the facts alleged in the complaint, the plaintiff accepted and received dividends on the stock, and so ratified and confirmed his purchase of it, waived his right to rescind, and any rescission theretofore attempted." It is also pleaded that the plaintiff made no offer at the time of his purported rescission to return to the defendant the dividends which he received on the stock up to the time of his alleged rescission. The plaintiff relies on his assertion that he informed the officers of the company and had others notify them, that the amounts received from the dividend checks were to be treated as payments on account of what was claimed to be due him. The checks were sent out and received with notice that they were in payment of dividends. The New York Supreme Court, Appellate Division, First Department, in reversing the judgment of the court below and ordering the complaint dismissed, says: "The plaintiff says dividends were not received as such, but the legal effect of a payment is not to be determined by declarations or understandings of the recipient." And: "It is clear that plaintiff, with full knowledge of the facts, accepted dividends, thereby treating the contract as in existence, and defeating his claim for rescission." Brennan vs. National Equitable Inv. Co., Inc., 224 N. Y. Sup. 572. Hines, Rearick, Dorr, Travis & Marshall, of New York (A. O. Dawson, of New York, of counsel, and W. W. Ahrens, of New York, on the brief, for appellant. Joseph Sterling, of New York, for respondent.

Enjoining former employee from conducting similar business contrary to contract agreement. Two justices dissenting, with brief opinions, the New York Supreme Court, Appellate Division, First Department, affirms, per curiam, the judgment of the Supreme Court, New York County, restraining defendant first named from continuing a breach of contract (outlined below) between him and the plaintiff, and restraining the defendant corporation from co-operating with him in such conduct. The plaintiff is engaged in the business of baking and selling cakes in the city of New York and other cities; the defendant corporation, organized by the defendant Tolley after leaving plaintiff's employ, is engaged in a similar business in New York City. Under his written contract of employment with plaintiff, Tolley "agreed not to engage in the business of manufacturing, baking, or selling cake, or to enter the employ of any other person engaged in such business for 10 years after terminating his employment with plaintiff, in the city of New York, or within 100 miles of such city or of any other city in the United States in which plaintiff or its successors at that time are engaged in the manufacture or sale of cake." Ward Baking Co. vs. Robert W. Tolley and Tolley Cake Corporation, 225 N. Y. Sup. 75. Olin, Clark & Phelps, of New York City (John W. Davis, of New York City, of counsel, and David E. Hudson of New York City, on the brief), for appellants. Chamberlin, Kafer, Wilds & Jube, of New York City (William H. Button, of New York City, of counsel, and Albert R. Jube, of New York City, on brief), for respondent.

Pennsylvania.

Ownership of a pharmacy or drug store by a corporation. The act of May 13, 1927 of the Pennsylvania legislature prohibits the ownership of any pharmacy or drug store by any other than a licensed pharmacist with a saving of the rights of those lawfully engaged in the business at the time of enactment to continue to own, etc., and subjects those violating its provisions "to a fine prohibitive in its effect." In an action sur motion for preliminary injunction restraining the defendants from enforcing the penalties of the Act and sur trial hearing on bill, answer, and proofs, the United States District Court for the Eastern District of Pennsylvania refuses the order and dismisses the bill, holding that the Act is not unconstitutional, as contended, as being violative of the "due process of law" clause. The court says: that "there is accord in this case upon the thought that the Act of Assembly should be upheld if the enactment has a substantial relation to the public interests."; that "We, of course, recognize the force of the argument addressed to us based upon the distinction between a law which forbade any one other than a skilled pharmacist to compound medicines and another law which forbade any one other than pharmacists to have a share in the ownership of a drug store. Even here, however, we are unable to say that there is not a substantial relation of ownership to the public interests. The medicines must be in the store before they can be dispensed to those who come to the store for the help which medicines can afford them. What is there is dictated not by the judgment of the pharmacist who hands it out to the customers but by those who have the financial control of the business. It may be the legislature thought that a corporate owner, in purchasing drugs, might give a greater regard to the price than to the quality, and if such was the thought of the legislature can this court say it was without a valid connection with the public interest and so unreasonable as to be unlawful?"; and, that "Because of our inability to make the finding that the instant Act of Assembly has no substantial relation to the public interest, we cannot hold it to be unconstitutional." Louis K. Liggett Co. vs. T. J. Baldridge, et al. (not yet reported).

Foreign Corporations

California.

Procedure when subscriber to stock fails to pay for and take the same. Action was brought by the plaintiff, a Delaware corporation, to recover an amount subscribed for certain nonassessable shares of preferred stock. It was alleged that "no definite date of payment of said subscription was stated therein, and the reasonable time for performance (without demand) by defendant in the premises expired long before but within four years preceding the commencement of this action." The District Court of Appeals, First District, Division 1, California, holds that the complaint was insufficient and that the demurrer was properly sustained by the court below. The court says: "The complaint contained no allegation as to the effect of the laws of Delaware, and, in the absence

of allegations to the contrary, the laws of that state must be presumed to be the same as our own. Norris vs. Harris, 15 Cal. 226; Peck vs. Noee, 154 Cal. 351, 97 P. 865. It is the rule in California that where a subscription contract is silent as to the time of payment the provisions of the Code with respect to the manner of making calls and assessments enter into and become a part of the contract, Los Angeles Athletic Club vs. Spires, 166 Cal. 173, 135 P. 298; and that suits for the collection of unpaid calls or assessments cannot be maintained until the corporation has followed and exhausted the procedure laid down in section 331 et seq. of the Civil Code [publication, etc., etc.]. Dell Development Co. vs. Marshall, 35 Cal. App. 324, 169 P. 717." "In the present case * * * it was not alleged that the prescribed procedure had been followed." Vegetable Oil Corporation vs. Twohy, 260 P. 813. R. S. Gray, of San Francisco, for appellant. Sanborn & Roehl and DeLancey C. Smith, all of San Francisco, for respondent.

Kentucky.

Failure to file with secretary of state name of agent for service of process no defense in action by foreign corporation for money due. Suit is for money due a Pennsylvania corporation from one of its soliciting agents in Kentucky. It is not essential to go into the merits. One of defendant's pleas was that plaintiff had not complied with the provisions of section 571 of the Kentucky statutes by filing in the office of the secretary of state the name of its agent upon whom process could be served. The Court of Appeals of Kentucky says: "We have held in a number of cases that a violation of section 571 of the statute is not a defense in suits of this character. Williams vs. Dearborn Truck Co., 218 Ky. 271, 291 S. W. 388; Falls City Machinery & Wrecking Co. vs. Sobel-Mark Furniture Co., 219 Ky. 195, 292 S. W. 814." Hoopes Bros. & Thomas Co. vs. Adams, et al., 299 S. W. 162. Hawk & Lewis, of Whitesburg, for appellant. Robert Blair, Sr., of Whitesburg, for appellees.

Missouri.

Reliance on statute of home state. Action for personal injuries. Judgment for plaintiff in Circuit Court, St. Louis County. The St. Louis Court of Appeals affirms. The defendant company is an Indiana corporation; plaintiff was employed in Indiana and sent from that state to Missouri to assist in the erection of a bridge there by the company. The sole question before the appellate court was the correctness of the trial court's ruling in sustaining plaintiff's motion to strike out the second paragraph of defendant's answer wherein it attempted to set up the Indiana Workmen's Compensation Act, and the employment of plaintiff in Indiana under the provisions of such act, as a bar to plaintiff's action in Missouri. The paragraph in question contents itself with a general reference to the Indiana Act, not attempting to state the law specifically, but adding "a copy of which said act is herewith filed and marked Defendant's Exhibit A, and that the act and each and every section thereof is hereby made a part of this plea, the same as if specific-

ally pleaded herein." The court states that the said Exhibit A is not a part of paragraph 2 of the answer, and further that: "It has repeatedly been held that not only must the law in such cases be pleaded, but the facts that constitute its violation must also be stated." Scott vs. Vincennes Bridge Co., 299 S. W. 145. Seymour Riddle, of Vincennes, Ind., and Ralph & Baxter, of Clayton, for appellant. John T. Manning, of St. Louis, and E. McD. Stevens, of Clayton (Jas. T. Roberts, of St. Louis, of counsel) for respondent.

Oregon.

"Doing business"; "isolated transactions." Plaintiff is a corporation organized under the laws of Washington. At the time of the transaction involved it had not filed any declaration of intention to transact business in Oregon, had paid no license fee, and had appointed no attorney in fact in Oregon. Plaintiff had shipped a quantity of lumber to an Oregon customer at a price fixed for so much thereof as met the customer's specifications. This was an interstate transaction. Some of this lumber failed to meet contract specifications; such, for a time, was stored on the customer's premises; in course of time the plaintiff was requested to remove this lumber as the space it occupied was needed by the customer. Plaintiff then sold the lumber to the defendant, in Oregon—an Oregon transaction. Action is for the selling price. Defendant alleged the doing of business without authority (sections 6909 and 6910, Oregon Laws). The Supreme Court of Oregon affirms the judgment of the court below for plaintiff saying, generally: "Courts are reluctant to enforce a forfeiture of a claim upon a strained construction of a statute, and such is the case here." And, specifically: "The timber had to be disposed of in some way and plaintiff was practically compelled to dispose of it, and that soon. It therefore sold the lumber to the defendant for a much less price than it had hoped to receive * * *. It was an isolated and an emergency transaction thrust upon plaintiff by the peculiar circumstances of the case." Rashford Lumber Co. vs. Dolan, 260 Pac. 224. I. G. Ankelis, of Portland (Thomas Mannix. of Portland, on the brief) for appellant. C. W. Hall, of Vancouver, Wash. (R. A. Coan, of Portland, on the brief), for respondent.

Taxation

Nova Scotia, Canada.

Direct and indirect taxation. The issue here is whether a tax imposed by the City of Halifax under its Charter is a direct tax, and so within the powers of the Provincial Legislature, or indirect, and so, ultra vires under the British North America Act. The tax in question is the business tax payable by every person occupying real property for business purposes (assessed on 50% of the capital value of such property); in the instant case the property involved is leased to and occupied by the Crown for business purposes (ticket office of the C. N. R.); the Charter

provides that the owner of property leased to the Crown shall be deemed to be the occupier of the premises for purposes of the tax; by the terms of the lease the lessee pays the business taxes, if any. The Supreme Court of Nova Scotia held the tax to be direct, and so, valid; the Supreme Court of Canada held it to be indirect, and so, void; the Judicial Committee of the Privy Council restores the decision of the Nova Scotia court, holding the tax to be direct and valid, saying that while the majority of the Supreme Court of Canada relied on the often quoted statement of John Stuart Mill that: "A direct tax is one which is demanded from the very persons who it is intended or desired should pay it," while "indirect taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another," and so held that the tax was indirect since it is to be expected that where the owner is made liable for a tax which is imposed in respect of the purposes for which the tenant occupies the premises the landlord would exact indemnity from the tenant, such reasoning requires reconsideration because the tax in question is essentially a property tax, that property taxes are universally recognized as being direct, and that "although new forms of taxation may from time be added to one category or the other in accordance with Mill's formula, it would be wrong to use that formula as a ground for transferring a tax universally recognized as belonging to one class to a different class of taxation." "It is the nature and general tendency of the tax and not its incidence in particular or special cases which must determine its classification and validity; and, judged by that test, the business tax imposed on an owner under s. 394 [of the Charter] is a direct tax." City of Halifax vs. Fairbanks, [1927] 4 Dominion Law Reports 945. F. H. Bell, K. C., and W. G. Brown, for appellant. I. C. Rand, K. C., and Pritt, K. C., for respondent.

Pennsylvania.

Tax on sale of liquid fuels applies to gasoline sold for manufacture of road surfacing preparation. Pennsylvania imposes a tax on the sale of liquid fuels sold in the Commonwealth "for any purpose whatsoever, except for the purpose of resale" the term "liquid fuels" being defined to mean "all liquids ordinarily, practically, and commercially usable in internal combustion engines, etc." The defendant, here, sold gasoline to a corporation which used it in the manufacture of a preparation for surfacing and repairing highways. The tax was assessed on the gasoline so sold; the defendant objected and declined to pay; the state brought suit; the court below held that the tax was properly imposed; on appeal the Supreme Court of Pennsylvania affirms. The court says: "The standard is whether the liquid is usable in engines, not whether it is actually so used. There is nothing whatever in the act requiring dealers to inquire as to the purpose for which the liquid fuel is to be used by the purchaser, except in the single instance where the object of the purchase is to resell. The tax being on the article itself, when its status as liquid fuel is once fixed, it is immaterial whether the purchaser intends to use it for household or other purposes or in an engine, so long as he does not

buy it for the purpose of resale." As to resale: "When used commercially in the manufacture of other products there is no resale of the 'liquid fuel,' within the meaning of the act." Commonwealth vs. Sun Oil Co., 139 Atl. 156. McIlhenny & Lamberton and W. Curtis Bok, all of Philadelphia, for appellant. Thomas G. Taylor, Deputy Atty. Gen., and Thos. J. Baldrige, Atty. Gen., for the Commonwealth.

The unit rule—What is unitary organization. An interesting and helpful article (denominated a "note"), with copious annotations, on the unit rule, which "may be described as a device for allocating to a taxing jurisdiction, values inherent in interstate businesses which cannot be determined by a mere valuation of property or business within a state," and particularly so to most readers of The Corporation Journal perhaps because of the discussion of the application and extension of the rule to ordinary business corporations of an interstate character in connection with the allocation of income for state franchise or income tax purposes in the case of "foreign" corporations, may be read in the Harvard Law Review (Cambridge, Mass.) for December, 1927, page 227.

Notes

A consolidation of engineering and construction companies of world-wide activities was announced January 17. The combining corporations were The U. G. I. Contracting Company, of Philadelphia, Public Service Production Company, of Newark, Dwight P. Robinson & Company, of New York, and Day & Zimmerman Engineering & Construction Company, of Philadelphia. A Delaware corporation is being organized under the name of United Engineers & Constructors Inc., with Mr. Dwight P. Robinson as president. The Corporation Trust Company, as usual with such important incorporations, will attend to the filing of papers in Delaware for counsel and will act as statutory representative of the new company.

The Corporation Trust Company has been appointed transfer agent for the W. A. Sheaffer Pen Company, whose brilliant financial success has been the subject of so much comment in the financial pages of the newspapers recently. We have also been appointed registrar of the stock of George A. Fuller Company, the construction company which has erected so many of New York's famous skyscrapers, and registrar of Okonite Company, internationally known maker of insulated wire and cables.

Invasion of the general merchandise chain-store field by the Schulte-United Cigar Store interests was signalized by the recent incorporation in Delaware of Schulte-United 5¢ to $1 Stores, Inc. The capitalization is $15,000,000 preferred stock and 800,000 shares of common without par value. The Corporation Trust Company was engaged by counsel to handle the details of in-

corporation in Delaware and to act as the company's statutory agent.

Such a great number of changes in directorships and partnerships took place over the year's end that it was decided to postpone publication of Poor's Register of Directors of the United States to March 1, in order to incorporate as many of such changes as possible.

As part of the announced plans for the merger of several important food manufacturers under the leadership of the Borden's milk interests, a new Delaware corporation was organized in January under the name of Borden's Milk Products Company, Inc., with a capitalization of $50,000,000. The Corporation Trust Company acted for counsel, as usual, in filing papers in Delaware and is to serve as the company's statutory agent in that state. The companies taken into the merger by Borden's are Reid Ice Cream Corporation, J. M. Horton Ice Cream Company, Inc., and Merrell-Soule Company, all of which were also Delaware corporations and all represented by The Corporation Trust Company.

458 corporations were organized under the laws of Delaware from December 20, 1927 to January 20, 1928, as against 479 for the preceding 30-day period, and 465 for the corresponding period of 1926-1927.

Some Important Matters for February and March

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALASKA—Annual Report due within 60 days from January 1.—Foreign Corporations.

ALABAMA—Annual Franchise Tax payable April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

ARIZONA—Annual Statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign Corporations engaged in mining of any kind.

ARKANSAS—Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

CALIFORNIA—Report on General Franchise due within 10 days after first Monday in March.—Domestic and Foreign Corporations.

COLORADO—Annual Report due within 60 days after January 1.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report on or before February 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between April 1 and before July 1.—Domestic Corporations.

DOMINION OF CANADA—Annual Income Tax Return due on or before April 30.—Domestic and Foreign Corporations.

Return of employers and return of dividends for income tax purposes due on or before March 31.—Domestic and Foreign Corporations.

GEORGIA—Registration and Payment of License Tax due January 1.—Delinquent April 30.—Foreign Corporations.

ILLINOIS—Annual Report due between February 1 and March 1.—Domestic and Foreign Corporations.

INDIANA—Annual Capital Stock Report due on or before March 1.—Foreign Corporations engaged in manufacturing.

KANSAS—Annual Report and Franchise Tax due between January 1 and March 31.—Domestic and Foreign Corporations.

LOUISIANA—Capital Stock Statement and Tax due on or before March 1.—Foreign Corporations.

MAINE—Annual License Fee due on or before March 1.—Foreign Corporations.

MARYLAND.—Annual Report due between January 1 and March 15.—Domestic and Foreign Corporations.

MASSACHUSETTS—Annual Report of information at the source for income tax purposes due between January 1 and March 1.—Domestic and Foreign Corporations.

Excise Tax Return due between April 1 and April 10.—Domestic and Foreign Corporations.

MISSOURI—Annual Return of Net Income due on or before March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax Report and Tax due on or before March 1.—Domestic and Foreign Corporations.

MONTANA—Annual Report due between January 1 and March 1.—Foreign Corporations.

Annual Return of Net Income due between January 1 and March 1.—Domestic and Foreign Corporations.

NEBRASKA—Statement to Tax Commissioner due on or before April 15.—Foreign Corporations.

NEW HAMPSHIRE—Annual Return due on or before April 1.—Domestic and Foreign Corporations.

Franchise Tax due between January 1 and March 1.—Domestic Corporations.

NEW YORK—Annual Franchise Tax payable on or before March 15.—Domestic and Foreign Real Estate and Holding Corporations, Transportation and Transmission Companies, other than those subject to the so-called income tax.

Annual Franchise Tax Report, Real Estate Holding Corporations, Transportation and Transmission Companies due between

January 1 and February 15.—Domestic and Foreign Business Corporations. Form 42 C. T. Section 182 of the Tax Law.

Annual Return of Withholding Agent due on or before April 15.—Domestic and Foreign Corporations.

NORTH CAROLINA—Income Tax Return and Return of Information due on or before March 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Annual Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

OHIO—Annual Report due between January 1 and March 31.—Domestic and Foreign Corporations.

PENNSYLVANIA—Capital Stock Report and Corporate Loan Report due on or before March 15.—Domestic and Foreign Corporations.

Bonus Report due on or before March 15.—Foreign Corporations.

RHODE ISLAND—Corporation Tax Return due on or before March 1.—Domestic and Foreign Corporations.

Annual Report due during February.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual License Tax Report due during month of February.—Domestic and Foreign Corporations.

Annual Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Annual Capital Stock Report due between January 1 and March 1.—Foreign Corporations.

TENNESSEE—Annual Return of Supplemental Information due between January 10 and March 15.—Domestic and Foreign Corporations.

TEXAS—Annual Capital Stock Report due between first day of January and the 15th day of March.—Domestic and Foreign Corporations that are required to pay annual franchise tax.

UNITED STATES—Annual Return of Net Income due on or before March 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

VERMONT—Annual License Tax Return and payment due on or before March 1.—Domestic and Foreign Corporations.

Extension of Certificate of Authority due on or before April 1.—Foreign Corporations.

Annual Report due on or before March 1.—Domestic Corporations.

List of Stockholders due on or before April 5.—Domestic and Foreign Corporations.

VIRGINIA—Annual Registration Fee due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1.—Domestic Corporations.

WEST VIRGINIA—Annual Report due in April.—Foreign Corporations.

WISCONSIN—Annual Report due between January 1 and April 1.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Analysis of Recent Amendments to Delaware Corporation Laws. Complete text of these important new features together with explanation of their effect.

What Constitutes Doing Business. A 128-page pamphlet containing brief digests of 301 decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Six Points to Watch in Incorporation. A valuable reminder for attorneys when planning a corporate structure or drafting incorporation papers.

Two Notable Certificates of Incorporation. Certificate of Standard Oil Company of California, and that of Tide Water Associated Oil Company.

Certificate of Incorporation of Pullman Incorporated. Pullman Incorporated was the first internationally known corporation to take advantage of the new features of the Delaware law as amended in 1927, and its charter will therefore be of great interest to lawyers.

Safeguarding Stock Transfers. Dealing with the many pitfalls in transferring stock on a corporation's books.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation. Revised to January, 1928.

When Doing Business Is Illegal. A brief discussion, illustrated by many actual examples taken from the court records of various states, of the difference between "Interstate" and "Intrastate" business.

Revenue Act of 1926. A reprint of the law as furnished to subscribers to The Federal Tax Service of this Company.

Amendments to New Jersey Corporation Laws. Full text of the ten amendments passed at the legislative session of 1927.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfers are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.

Lawyers' Preliminary Work Sheets. Large sheets for the double purpose of reminding counsel of all the various points on which he may need information from his client before starting the preparation of incorporation papers, and furnishing a convenient medium on which to record such information in rough but systematic form for later reference.